

(2014) 01 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

Melanie Das

APPELLANT

Vs

Royal Sundaram Alliance Insurance Company Ltd.

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Citation : 2014 0 NCDRC 56 : 2014 1 CPJ 302

Hon'ble Judges : D.K.JAIN , VINEETA RAI , VINAY KUMAR J.

Advocate : JAYANT TRIPATHI , P.K.SETH

Judgement

1. IN this appeal under Section 19 of the Consumer Protection Act, 1986 (for short "the Act"), the appellant questions the correctness of order dated Feb.12, 2013 passed by the State Consumer Disputes Redressal Commission, Haryana at Panchkula (for short "the State Commission"), whereby her complaint, challenging repudiation of claim for reimbursement of medical expenses by the respondents has been dismissed on the ground of territorial jurisdiction.

2. ACCORDING to the appellant, since the year 2005 she is a frequent visitor to the United States of America, as her son is studying there. During such visits, she had been taking Single Trip Secure Class Silver Policy from M/s. Royal Sundaram Alliance Insurance Company Ltd., (for short "the Insurance Company"). In the year 2011, before leaving for the United States, she took one such policy from the regional office of the Insurance Company at Gurgaon (Haryana). A premium of Rs.17,101/- for the policy was paid by cheque dated March 1, 2011, at Gurgaon. The appellant left for the United States on March 7, 2011. During her stay there, in the last week of March 2011 she started having episodes of a medical condition, known as "Diplopia " each lasting for 15 to 20 seconds, three or four times a day. As the problem persisted, she consulted a doctor there, who on evaluation, advised her to undergo an MRI scan. She informed the Insurance Company about her ailment, who in turn, asked her to contact the US helpline of the Insurance Company. The US helpline of the Insurance Company permitted her to proceed with the MRI as advised by the

doctor from an imaging centre. Accordingly, MRI was done on May 6, 2011 at the Eastside Imaging Centre, Cleveland which revealed that she was suffering from "Right Posterior Clinoid Meningioma ". She was referred for further management. The doctors recommended a GKRS to be conducted within the next two months costing US\$60000 to US\$70000. Due to severity of the problem the procedure was carried out and she spent US\$39339 as medical expenses. Somewhere in June, 2011, the Imaging Centre sent their bill for \$4,688 to the registered office of the Insurance Company at Chennai for release of payment for the MRI conducted by them. However, the Insurance Company did not respond.

3. THE complainant lodged a claim for reimbursement of the expenses incurred by her on diagnostic tests as well as on treatment with the Insurance Company. Vide letter dated July 5, 2011 the Insurance Company repudiated the claim on the ground that their panel doctor has opined that "Meningioma " is usually a slow growing disease and takes several months to years to attain the size of about 3 cms., which the Complainant had, and hence, it is a pre -existing disease. The expenses incurred for treatment of pre -existing conditions were outside the scope of policy. Aggrieved, on March 12, 2012, the appellant issued a legal notice to the Insurance Company addressed at their regional office at Gurgaon, from where she had obtained the said policy, calling upon them to reimburse the entire expenses incurred by her and which may be incurred, in future. Having failed to get any response thereto, on April 2, 2012, the appellant filed complaint against the Insurance Company, inter alia, praying for a direction to the Insurance Company to reimburse the medical expenses incurred by her for treatment of the aforesaid ailment along with punitive damages, legal notice fee and cost of proceedings, totaling Rs.31,23,467/ -. The registered office as well as the regional office of the Insurance Company were impleaded as opposite parties.

4. UPON notice, the Insurance Company entered appearance and contested the complaint. One of the objections taken in the written statement was that the State Commission at Panchkula had no jurisdiction to entertain the complaint as the policy was taken from the Insurance Company whose Corporate Accidents and Health claims department was based at Chennai; she had been treated for ailment at the United States; the complainant had submitted her claim with the Insurance Company at their Chennai office and the same was repudiated by the aforesaid department at their Chennai office. The parties tendered evidence by way of affidavits. Relying on the decision of the Hon "ble Supreme Court in *Sonic Surgical Vs. National Insurance Co. Ltd.*, (2009) CPJ 40 (SC), the State Commission upheld the preliminary objection raised by the Insurance Company. The State Commission has come to the conclusion that on the facts and circumstances of the case, no ""cause of action "" had accrued within their territorial jurisdiction. Hence, this appeal by the complainant.

5. AS the appellant has been non -suited by the State Commission for lack of territorial jurisdiction, learned counsel for the parties confined their submissions to the question of territorial jurisdiction. Learned counsel appearing for the

appellant contended that apart from the fact that the decision in Sonic Surgical 's case is clearly distinguishable on facts, the State Commission has failed to appreciate the ratio decidendi of the said decision. It was pleaded that, unlike in Sonic Surgical 's case, where fire had broken out in the godown at Ambala; the insurance policy was taken at Ambala and the claim was also made at Ambala and, therefore, it was held that no ""cause of action "" arose at Chandigarh, in the present case, the appellant had obtained the insurance policy from the regional office of the Insurance Company at Gurgaon (Haryana) and the premium for the policy was paid at Gurgaon, the ""cause of action "" did arise at Gurgaon, i.e. within the territorial jurisdiction of the Haryana State Commission. Referring to the provisions of Section 17(2) of the Act, learned counsel asserted that since the Insurance Company had its regional office at Gurgaon, the ""cause of action "" in terms of the said provision had arisen at Gurgaon.

6. PER contra, learned counsel for the Insurance Company supported the view taken by the State Commission. It was urged that the entire correspondence relating to the claim in question, including letter claiming reimbursement of the medical expenses incurred and letter dated July 5, 2011, repudiating the claim having been exchanged with the corporate office of the Insurance Company at Chennai, the ""cause of action "" arose only at Chennai. In support of the plea that merely because the Insurance Company had a regional office at Gurgaon, it did not mean that ""cause of action "" arose at Gurgaon, strong reliance was placed on Sonic Surgical 's case (supra). Having considered the matter in the light of Sub -Section 2 of Section 17 of the Act and the documents on record, we are of the view that the order of the State Commission under challenge is unsustainable for the reasons stated hereinafter. Section 17 of the Act defines the jurisdiction of a State Commission. Sub -Section 2 of Section 17 of the Act, inserted by Act 62 of 2002, with effect from March 15, 2003, relevant for our purpose, reads as follows: ""[(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction, - (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises.] ""

7. ON a plain reading of the afore -extracted provision it becomes clear to us that a complaint under the Act can be instituted in a State Commission within the limits of whose jurisdiction any one of the three situations contemplated in the provision is shown to exist. The use of the word ""or "" at the end of sub -clauses (a) and (b) of the said Sub -Section is significant and reflects the object

of the legislation, leading to the conclusion that each of the three contingencies enumerated therein is independent of each other and not cumulative. However, in *Sonic Surgical 's case (Supra)*, the Supreme Court seems to have taken a different view on the issue. Explaining the scope of said provision, which was not in the Act when complaint in *Sonic Surgical 's case* was filed, the Hon 'ble Supreme Court has been pleased to observe that although the interpretation placed by them would be a departure from the plain and literal words of Section 17(2) of the Act, but in order to avoid absurd consequences, the expression ""branch office "", as appearing in the newly inserted provision would mean the branch where the ""cause of action "" has arisen. Thus, the Court opined that mere existence of a branch office of a company would not ipso facto be determinative of the territorial jurisdiction of the State Commission. The ""cause of action "" must also arise at that place. Pithily stated, both the said conditions have been held to be cumulative and not independent of each other.

8. BEARING in mind the ratio of the said decision, which is binding on us, the question for examination is as to whether on facts at hand the ""cause of action "" had arisen at Gurgaon, as it is not in dispute that the Insurance Company had its regional office at Gurgaon. The expression ""cause of action "" is neither defined in the Act nor in the Code of Civil Procedure. However, by virtue of a catena of decisions of the Supreme Court, wherein the meaning of the said expression in legal parlance has been explained, the expression has been held to be of wide import. Generally, the expression ""cause of action "" is described as "bundle of facts " which the petitioner must prove, if traversed, to entitle him to the relief prayed for. In *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Ors.*, 1994 (4) SCC 711, a bench of three Learned Judges of the Supreme Court, while interpreting the expression ""cause of action, wholly or in part, arises "" as appearing in Article 226(2) of the Constitution of India (similar expression is used in Section 17(2)(c) of the Act) observed, thus: ""It is well settled that the expression ""cause of action "" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In *Chand Kour Vs. Partab Singh* [ILR (1889) 16 Cal 98, 102:15 IA 156] Lord Watson said: "" ...the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. ""

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. ""

9. AGAIN in Navinchandra N. Majithia Vs. State of Maharashtra and Ors., (2007) 7 SCC 640, explaining the import of the said expression, in his concurring judgment, K.T. Thomas J. observed as under: ""The collocation of the words ""cause of action, wholly or in part, arises "" seems to have been lifted from Section 20 of the Code of Civil Procedure, which section also deals with the jurisdictional aspects of the courts. As per that section the suit could be instituted in a court within the legal limits of whose jurisdiction the ""cause of action wholly or in part arises "". Judicial pronouncements have accorded almost a uniform interpretation to the said compendious expression even prior to Fifteenth Amendment of the Constitution as to mean ""the bundle of facts which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court "".

In Read V. Brown Lord Esher, M.R.[(1888) 22 QBD 128:58 LJQB 120:60LT 250 (CA)], adopted the definition for the phrase ""cause of action "" that it meant ""every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved "".

10. IN Kandimalla Raghavaiah and Co. Vs. National Insurance Co. Ltd. and Anr., (2009) 7 SCC 768, the Supreme Court has stated that ""cause of action "" is cause of action which gives occasion for and forms the foundation of the suit. Tested on the touchstone of the aforesaid principle, we are unable to hold that in the instant case not even a part of ""cause of action "" had arisen at Gurgaon. Admittedly, the policy was obtained from the regional office of the Insurance Company at Gurgaon and the premium was also paid at Gurgaon; Legal notice (though not a statutory requirement) was issued to the regional office at Gurgaon, which of course was not responded to. We are unable to accept the stand of the Insurance Company that since their Corporate office was at Chennai and the claim was preferred at Chennai, the ""cause of action "" arose only at Chennai. If the stand of the Insurance Company is accepted it would mean that all complaints in respect of the disputes pertaining to the insurance policies issued by the Insurance Company would have to be filed at Chennai, notwithstanding the fact that a part of ""cause of action, "" as delineated above, might have arisen at a place other than Chennai. Such an interpretation, in our view, would not only be prejudicial to the interest of the consumers, it will cause more inconvenience to them and thus, be repugnant to the spirit of Sub -Section (2) of Section 17 of the Act. In our view, obtaining of the policy, payment of premium for the same from the regional office of the Insurance Company at Gurgaon are material foundational factors, giving rise to ""cause of action "" partly, if not wholly, at Gurgaon conferring jurisdiction on the Haryana State Commission. Therefore, in the present case even the twin test as laid down in Sonic Surgical 's case stands satisfied.

11. AS regards the decision of the Supreme Court in Sonic Surgical, on which

strong reliance was placed on behalf of the Insurance Company, as already noted above, the facts of that case are clearly distinguishable from the facts in hand. In that case, insurance policy had been taken at Ambala; the fire broke out in godown at Ambala and claim for compensation was also made at Ambala, which, as noted above, is not the case here. In the light of those facts it was held that no ""cause of action "" arose at Chandigarh, where the complaint under the Act was filed.

12. FOR the aforesaid reasons, the appeal succeeds and is hereby allowed. The impugned order is set aside and the complaint is restored before the Haryana State Commission for being decided on merits. The State Commission is requested to dispose of the complaint as early as possible. The appellant shall be entitled to the costs of this appeal, quantified at Rs.25,000/ -. The parties/their counsel are directed to appear before the State Commission on February 27, 2014 for further proceedings.